

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
PETITION FOR
REHEARING**

77-1127

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT OF NEW YORK

UNITED STATES OF AMERICA,

~~-against-~~

DOCKET No. 77-1127

LEOLUCA GUARINO,

DEFENDANT-APPELLANT.

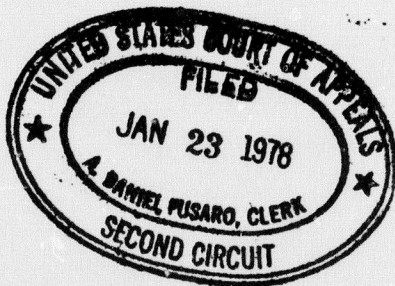
PETITION FOR REHEARING PURSUANT
TO RULE 40, RULES OF APPELLATE
PROCEDURE

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P/S

DATED: This 18th day of January, 1978.

Respectfully submitted,

Leoluca Guarino



Leoluca Guarino #78281
Defendant-Appellant pro se
PO Box PMB
Atlanta, Georgia 30315

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

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LEOLUCA GUARINO,

DEFENDANT-APPELLANT.

PETITION FOR REHEARING PURSUANT
TO RULE 40, RULES OF APPELLATE
PROCEDURE

The defendant-appellant, LEOLUCA GUARINO, petitions this Honorable Court for rehearing of this appeal. An opinion/order was entered by this Court on January 4, 1978, denying the appellant relief. Rehearing is sought upon the ground that this Court omitted to rule on the appellant's claim that equal protection of the laws requires that a federal prisoner removed on a writ of habeas corpus ad prosequendum be accorded the same protection that this Court demanded for state prisoners in United States V. Mauro, 544 F.2d 588 (2nd Cir. 1976), certiorari granted 22 CrL 4002; and United States V. Cyphers, 556 F.2d 630 (2nd Cir. 1977), certiorari denied 97 S.Ct. 2937. (See appellant's brief-in chief, p. 19).

The appellant respectfully submits to this Court that his Mauro claim is one of first impression and is grounded on equal protection of

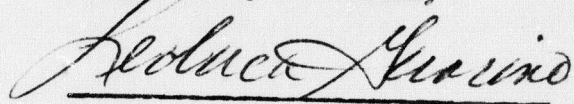
the laws concept as given vitality through the due process of law clause to the Fifth Amendment. (See e.g., Bolling V. Sharpe, 347 U.S. 497, 74 S.Ct. 693, 98 L.Ed. 884 (1954)). Consequently, he respectfully petitions this Court for a rehearing whereby he may receive the benefit of a ruling on his claim that the Government was required to try him on indictment 76 Cr. 324 before returning him to the Atlanta Penitentiary--from where he had been removed by writ of habeas corpus ad prosequendum. (See Mauro, supra).

CONCLUSION

For the foregoing reasons the instant petition for rehearing should in all respects be granted.

DATED: This 18th day of January, 1978.

Respectfully submitted,



Leoluca Guarino #78281
Defendant-Appellant pro se

CERTIFICATE OF SERVICE
BY MAIL

STATE OF GEORGIA)
)
COUNTY OF FULTON) SS:

LEOLUCA GUARINO, after being duly by law sworn, deposes and says: that on this 18th day of January, 1978, he mailed a copy of the instant Petition For Rehearing to the United States Attorney's Office for the Southern District of New York. All of which should constitute sufficient proof of service.

Yours etc.,

Leoluca Guarino

Leoluca Guarino #78281
Defendant-Appellant pro se

Sworn to before me this
18th day of January, 1978.

Parale Officer: Authorized by the
Act of July 7, 1955 to administer
~~Oaths (18 U.S.C. 4084)~~

C.C. Moore
C.C. MOORE, SENIOR CASEWORKER

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